

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION - LOS ANGELES

4 UNITED STATES OF AMERICA,) Case No. CR 24-621-MWF-6
5 Plaintiff,) Los Angeles, California
6 v.) Thursday, December 12, 2024
7) 2:23 P.M. to 3:29 P.M.
8 DURK BANKS,)
9 Defendant.)
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15 TRANSCRIPT OF PROCEEDINGS
16 BEFORE THE HONORABLE PATRICIA DONAHUE
17 UNITED STATES MAGISTRATE JUDGE
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25 Appearances: See Page 2
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1 LOS ANGELES, CALIFORNIA, THURSDAY, DECEMBER 12, 2024, 2:23 P.M.

2 (Call to Order of the Court.)

3 THE CLERK: Calling Case No. CR 24-621-MWF-6,
4 *United States v. Durk Banks*.

5 Counsel, please state your appearances.

6 IAN YANNIELLO: Good afternoon, Your Honor.
7 Ian Yanniello, Gregory Staples, and Danny Weiner on behalf of
8 the United States.

9 THE COURT: Good afternoon.

10 GREGORY W. STAPLES: Good afternoon.

11 DANIEL H. WEINER: Good afternoon.

12 DREW FINDLING: Good afternoon, Your Honor.

13 Drew Findling, Jonathan Brayman, Marissa Goldberg,
14 Christy O'Connor, and Mr. Banks present. Thank you.

15 THE COURT: All right. Good afternoon. We are
16 here for the detention hearing, which was continued to today
17 at the request of the defendant.

18 Is the defense prepared to go forward today with
19 the detention hearing?

20 MR. FINDLING: We are, Your Honor.

21 THE COURT: All right. Then I'll begin by asking
22 the Government to please identify what the Government
23 proffers in support of the detention request.

24 MR. YANNIELLO: Yes, Your Honor. The Government
25 proffers the Complaint in this case, the First Superseding

1 Indictment, the brief the Government filed today along with
2 its -- the two exhibits, one of which was filed under seal.
3 When I spoke with counsel prior to this hearing, to the
4 extent that there's any specifics discussed related to that
5 exhibit, the Government would ask those conversations take
6 place at sidebar.

7 The Government also proffer the Pretrial Services
8 Report as well as its recommendation of detention, though the
9 Government disagrees with the conclusion that flight risk is
10 not a basis for detention. The Government submits that both
11 flight and danger are ongoing and would believe that
12 Mr. Banks should be detained on both counts.

13 THE COURT: All right. Thank you. I have reviewed
14 all of those materials and signed the order granting the
15 Government's ex parte application to seal Exhibit 2.

16 Were -- was the Government's brief, as well as all
17 of the materials, including the sealed material, served on
18 defense counsel?

19 MR. YANNIELLO: Yes, Your Honor. The under-seal
20 portion was served, and then the Pacer notification would
21 have provided notice and service to -- related to the
22 publicly filed documents.

23 THE COURT: All right. Thank you.

24 Then I will hear argument beginning with the
25 Government.

1 MR. YANNIELLO: Thank you, Your Honor.

2 The Government's positions are set forth in its
3 briefing. I think this room is a good barometer for -- a
4 good bellwether for the fact that the defendant is a powerful
5 and influential man. He has significant resources, as
6 evidenced by the bond -- proposed bond package that he's
7 submitted, but this case is about how he's used that power,
8 how he's used that influence, and how he's used those
9 resources, and he used those to promote and perpetuate
10 violence with deadly consequence.

11 Defendant is alleged to have committed this murder
12 with other coconspirators, hitmen who defendant orchestrated
13 and caused to fly from Chicago and conduct a brazen,
14 calculated murder in broad daylight outside one of the
15 busiest malls in the country. About 4:00 p.m. in the
16 afternoon with cars driving by, machine gun fire rained down
17 attempting to murder a rival, ultimately striking somebody
18 who was in the vehicle with that person, and by nothing short
19 of a miracle, nobody else was killed during that encounter.

20 The brazenness of the conduct, the allegations, the
21 other information before the Court warrant detention in this
22 matter. There are no conditions or combination of conditions
23 that can ensure defendant's appearance or mitigate the risk
24 of continued danger to both the community and witnesses in
25 this case.

1 THE COURT: You referenced Pretrial Services
2 recommendation with regard to the risk of flight. Could you
3 just give a bit more background to the reason why the
4 Government contends that the detention is warranted here
5 based on serious flight risk?

6 MR. YANNIELLO: Sure, Your Honor.

7 So I think -- let's go back in time to some of the
8 -- some of what happened here.

9 So following the murder, defendant's coconspirators
10 were charged in an indictment, and the date that that
11 indictment was unsealed the FBI conducted multiple search
12 warrants, made arrests of those codefendants. Defendant was
13 not yet indicted or charged in this case. On that same day,
14 defendant booked -- FBI received notice that the defendant
15 was booked on three international flights, one -- at least
16 one of which -- we believe multiple of those flights were
17 destined for Dubai, but at least one of those flights was
18 destined to a nonextradition country. Defendant was
19 ultimately arrested pursuant to a complaint at the airport
20 essentially prepared to board that flight with luggage and
21 everything else.

22 So the Government submits that that evidence is
23 defendant's intent. As the walls were closing in, he
24 attempted to flee, he attempted to board an international
25 flight, and now he's fully aware of the FBI's ability to

1 track flight records and track boarding records, and so the
2 Government believes that he's a sophisticated, smart man; to
3 the extent that he wants to flee, he's going to be able to do
4 it by not booking a flight and simply crossing the border
5 just south of us that's a couple-hour car ride.

6 THE COURT: All right. Thank you, Counsel.

7 All right. I will hear from the defense. I have
8 received a binder from the defense with four tabs with
9 various documents, which was delivered to the Court today,
10 and I have reviewed all of those materials. I'll hear
11 argument from the defense.

12 MR. FINDLING: Your Honor, Mr. Brayman is going to
13 begin our presentation. I'll follow up at the Court's
14 permission.

15 THE COURT: All right. Thank you.

16 MR. FINDLING: Thank you so much, Your Honor.

17 JONATHAN M. BRAYMAN: Thank you, Judge.

18 And in the way that we have it divided up is I'm
19 going through some of the mitigation and personal details of
20 Mr. Banks's life growing up in Chicago, and then Mr. Findling
21 is going to follow up with some of his professional
22 accomplishments, connections, and all the things that he has
23 done in his professional life as a musical artist.

24 Judge, in terms of Mr. Banks --

25 THE COURT: Hold a moment.

1 MR. BRAYMAN: Sure.

2 (Clerk speaks with the Court.)

3 THE COURT: All right. Would you please go to the
4 lectern?

5 MR. BRAYMAN: Yes. Thank you, Judge.

6 Judge, in terms of Mr. Banks's background, he grew
7 up -- he was born and raised in Chicago -- on the Southside
8 of Chicago in the Englewood neighborhood. It is one of the
9 most economically depressed neighborhoods in Chicago. He was
10 raised by a woman that is here in court today.

11 Lashawnda Woodard, who's in the first row here in court in
12 the white shirt, is his mother, and she raised him, along
13 with his grandmother Hattie in a house at 7220 South Halstead
14 in Chicago.

15 He was raised there in a home full of love and
16 surrounded by five siblings. He had an older brother by the
17 name of Dante, and he also has a father by the name of
18 Dante Banks who had -- at a very early age in Mr. Banks's
19 life was incarcerated -- at seven months old. Mr. Banks's
20 dad was incarcerated up until a period of time a few years
21 ago. Since Mr. Banks's father has come home, he's a man of
22 faith now. He is somebody that participates in his faith
23 community and his family, and he's dedicated to his community
24 in Chicago. He has worked with Chicago CRED -- C-R-E-D --
25 which is a gun-violence-reduction program that was started by

1 former U.S. Secretary of Education Arnie Duncan in Chicago.

2 And essentially, Judge, growing up in Englewood,
3 Mr. Banks was no doubt surrounded by violence, gangs, drugs,
4 and music was his way out of that community. His mom talks
5 about him writing at an early age, and it was his way to
6 express himself about what he was feeling at the time and
7 what he was going through in Chicago. And in -- around the
8 time that he was 17, 18 years old, he started to make a name
9 for himself. In 2012 him and his older brother started a
10 group "Only the Family," which was fittingly named "Only the
11 Family" because it was him and his older brother Dante, and
12 in 2013 Def Jam records signed Mr. Banks to a multi-record
13 deal that ultimately allowed Mr. Banks to move out of
14 Chicago, move his family out of Chicago, and he moved to
15 Atlanta in Fulton County, where he lived for a couple years.

16 Once he was in Fulton County -- and, Judge, you do
17 have a Pretrial Report that has a criminal case from
18 Fulton County. We have shared documents from that case. It
19 was a dismissed case, but ultimately we have shared documents
20 both with the Government and Pretrial Services that show that
21 after Mr. Banks was arrested in that case -- he was arrested
22 with a couple codefendants -- that he was in strict
23 compliance with Judge Farmer's orders there. He was
24 initially -- he was initially set two conditions that
25 included GPS monitor, curfew, reporting, no contact with any

1 witnesses, and because of his strict compliance, Judge Farmer
2 over time eased the conditions. He allowed Mr. Banks to
3 continue to engage in gainful employment as a musician and a
4 recording artist. He traveled with the consent and
5 permission of the court, both in this country and also
6 internationally.

7 And since the time that he moved out of Chicago, he
8 has traveled extensively for business purposes, Judge, and I
9 think in the --

10 THE COURT: Let me just ask you a question with
11 regard to you mentioned that he was being supervised by the
12 court in -- or under supervision order of the court in
13 Fulton County. Was he under that supervision order at the
14 time of the conduct that is alleged in this case?

15 MR. BRAYMAN: We had just looked at the documents.
16 I think ultimately the declination of prosecution happened
17 October 17, 2022. The allegation that is at the heart of
18 this case is from about two months earlier, August 19, 2022.
19 I think he was still under supervision at that time. Judge,
20 obviously we contest his involvement in what is charged in
21 this case, but, Judge, I think at that time it was -- the
22 district attorney in Fulton County was in the process of
23 essentially dismissing that case and -- so, Judge, but in
24 that case there was never a suggestion of any type of -- any
25 type of violation, and because he was doing so well on

1 Pretrial Services, Judge Farmer there allowed him to travel,
2 continue to support his family, and continue to engage in
3 gainful employment.

4 Judge, some of the other good things about
5 Mr. Banks is that he did move out of Chicago, and he moved to
6 Atlanta for a couple years, and ultimately something that you
7 don't always have when you have people that were born in
8 other states is that Mr. Banks actually has extensive social
9 and economic ties to this district, to the Central District
10 of California, and that he lived here and has lived here for
11 the last several years, that he moved to Los Angeles in 2019.

12 Also, Judge, in terms of his good works and his
13 acts of service, he founded a foundation, a 501(c)(3)
14 nonprofit organization called "Neighborhood Heroes." The CEO
15 of that foundation is here in court -- Kevin Freeman, who's
16 the gentleman raising his hand in the front row there -- and
17 some of the things that they did in Chicago and elsewhere was
18 in April of 2020 they helped bring hot meals to frontline
19 workers in Chicago at Mercy Hospital, they helped feed
20 thousands of families for Thanksgiving in 2021 and '22, and
21 they have encouraged education in communities in Chicago,
22 Atlanta, and elsewhere, for young people to be able to go to
23 colleges and historic -- HCBUs and Howard University. They
24 have allowed young people to be able to live to their full
25 potential, like Mr. Banks has done.

1 Judge, his story is -- it's one of maturity, it's
2 one of growth, and it's one of trying to do better for him
3 and his family.

4 And, Judge, that's all I have to say in terms of
5 the personal aspect. I think Mr. Findling will follow up
6 with some professional details about --

7 THE COURT: And I just have --

8 MR. BRAYMAN: -- his life as an artist.

9 THE COURT: -- one question about something you
10 said just so I understand. He has lived in Los Angeles, in
11 the Central District of California since 2019?

12 MR. BRAYMAN: Yes, Judge. And I think it's
13 reflected -- I just read the Pretrial Report that we
14 received. I believe it's reflected in the Pretrial Report --
15 2019 -- and then I think up until June -- or July of 2024.
16 He does own a property in Florida. He owns two properties
17 in Georgia, which are part of the bond submission, and I'll
18 let Mr. Findling follow up with that information.

19 THE COURT: All right. Thank you.

20 MR. BRAYMAN: Thank you, Judge.

21 MR. FINDLING: Your Honor, my name is
22 Drew Findling. Thank you for the privilege of appearing here
23 today.

24 I do want to add some context. I know you asked
25 Mr. Brayman about Fulton County. My law partner

1 Marissa Goldberg and I -- our offices are in Fulton County.
2 I -- that's where my career is, my -- one of my daughters is
3 a public defender there, my son was, I was a public defender;
4 so I know the county pretty well, and I just for a second
5 want to give you some context.

6 That case that the Government there --
7 Fulton County -- the district attorney's office declined to
8 prosecute is a case that takes RICO cases and gang cases very
9 seriously. They seldom decline to prosecute a case. You may
10 know from the news that they pursued a RICO case and continue
11 to stand by a RICO case against the former president of the
12 United States of America. They made national news with a
13 two-year trial in the YSL RICO case. They tried the YFN RICO
14 case.

15 All of these are gang-related cases where the
16 attorneys, I can assure you -- because we've been part of
17 some of them -- have begged for declining prosecutions. Our
18 district attorney -- because that's where I live --
19 Fani Willis seldom will decline a case. So it is quite a
20 statement that she declined to prosecute this case, coupled
21 with the fact that The Honorable Judge Farmer --
22 Judge Kevin Farmer is a no-nonsense judge. So he had to sign
23 off on that declined case. That combination says a lot about
24 the potency of that particular prosecution.

25 Your Honor, I do want to immediately respond --

1 there's some issues I want to get to, and respectfully, the
2 Government began their presentation by looking over their
3 right and left shoulder and telling you that this was a
4 testament to the powerful and influential nature of
5 Mr. Banks. I would respectfully disagree with counsel.

6 I would say, rather, the interest in Mr. Banks --
7 because, quite frankly, I didn't know a lot about him before
8 I became his lawyer, but what I've learned is really common,
9 which is that there is an interest level in him in the
10 community and the media for some of the reasons that
11 Mr. Brayman alluded to, and that is a young man whose dad
12 went to jail when he was just seven months old and was raised
13 in a three-bedroom apartment with his mother, his aunt, his
14 brother, and two sisters, and literally, as is reported,
15 spent many of those years literally sleeping on the floor as
16 his mom tried to survive, but as Mr. Brayman mentioned, he
17 then turned to music, and that really changed his -- that
18 changed his life.

19 So I want to, for our purposes, talk about two
20 important issues. The Government of course took the position
21 that they disagreed -- and I'll get to that in a second --
22 with the Pretrial Services Report, and respectfully, we
23 disagree with the report because it finds a reason to detain
24 our client. We think, as the package reflects -- and I'll
25 talk about in a few minutes -- that he should be released

1 with strict conditions on bail.

2 But first, I want to talk about the appearance of
3 Mr. Banks as required because nevertheless the Government
4 contested that's something for the Court to take into
5 consideration. Again, respectfully to counsel for the
6 Government, I don't think that if he's released there's
7 nothing that we've found that indicates -- this is the first
8 I've heard of it -- there's some concern that he's two hours
9 from the Mexican border. I've not seen anything to do that
10 -- with this case.

11 However, it is true that Mr. Banks, as so many
12 people in his situation, travel internationally. He is an
13 international recording artist, and I will tell you that he
14 does -- he has flown to Dubai, absolutely, over the last two
15 years, and there's reasons for that. One, of course, in
16 2019, after waiting to have a relationship and to be with his
17 dad other than in jail visits -- his dad was out. His dad
18 turned to the Muslim faith. He in turn embraced the Muslim
19 faith, and of course to many, the heartland of that faith is
20 in the UAE, and he spent time there.

21 But importantly, that is a big part of his
22 profession. Having that relationship in the UAE -- I will
23 tell Your Honor that we come from Atlanta, the kind of -- you
24 know, the -- some people call it the "Hip Hop Hollywood."
25 It's impossible to get a flight because the music industry

1 goes back and forth there. That is a big place for
2 performances. Mr. Banks has performed there, and if you have
3 made it in his musical genre, that is an incredible place to
4 make an income. So that is not unusual. And so the record
5 is really clear that he has flown to the UAE. We don't deny
6 that. We don't debate that. We don't fight that.

7 In fact, he was -- just four days before he was
8 taken into custody -- excuse me -- four days before -- he
9 came back -- excuse me -- from being in London -- this is
10 referred to in some of the documents you received. He was in
11 the U.K., and I want to tell the Court why he was in the
12 U.K., because he was in the U.K. because Mr. Banks, who is --
13 our position -- is not a threat to the community, is not a
14 threat to leave the jurisdiction but respect the rules and
15 the direction of the court -- was in the U.K. as a guest of
16 the NFL Chicago Bears. He actually was in a suite watching
17 the game with the mayor of London and the mayor of Chicago.
18 He was the guest of the Chicago Bears. He actually spent
19 time with Roger Goodell, the commissioner. So these are the
20 kind of people that have embraced him because of his
21 community outreach we'll talk about in a second.

22 He comes back from that trip to the U.K., and
23 that's when he has -- as Your Honor can see from some of the
24 documents, there's a search warrant for his phone. Now, if
25 he is so concerned about fleeing the jurisdiction of anywhere

1 in the United States and heading for the Mexico border,
2 heading for somewhere else -- when his phone is taken from
3 him, if he's so concerned about what's going to be on that
4 phone, that's the time to leave.

5 But what does happen is exactly four days after his
6 phone is taken by the Government, by the FBI so they can look
7 into it, he performs in front of 19,000-plus people in an
8 arena -- the United arena in Chicago for a birthday
9 celebration for himself -- sold out. He's in front of 19,000
10 people performing. So there was no fear on his part that
11 they had his phone and four days later he's going to take
12 off, but rather he does this performance.

13 And so I want to address for a second the
14 Government told you that he had this concern and booked these
15 flights. I will tell you that -- I agree with the
16 Government. There were reservations that were made because
17 he was going to the UAE. And we've looked at documents, and
18 I want to share something with the Court.

19 There -- I know the Government wasn't specific, but
20 looking at the original complaint and some of the documents,
21 there was this belief that there was a reservation to Dubai,
22 then there was a reservation to Switzerland, and ultimately a
23 private flight. I will tell you, we've been trying to gather
24 the private flight information, and it appears over
25 approximately a 13-month period of time he took as many as

1 two dozen private flights. Good decision or bad decision,
2 economically that is part of his musical industry. They keep
3 the private flight companies -- the charter flights very,
4 very busy.

5 But specifically, I will share -- and I can -- I'm
6 going to give a copy -- because I want to share this with the
7 Government so that we can correct their understanding. This
8 is the e-ticket.

9 Counsel, can I -- yeah.

10 And, Your Honor, would you like me to give it to
11 the clerk so they can give this to you?

12 THE COURT: You can approach and hand it to my
13 courtroom deputy.

14 MR. FINDLING: Okay.

15 (Pause.)

16 MR. FINDLING: And, Your Honor, we'd be happy to
17 mark these at the end of the hearing for convenience of
18 everybody. We're keeping track of them, and so we'll mark
19 them at the conclusion, not to take away from the flow of the
20 hearing.

21 And I think what -- there was some confusion -- and
22 I -- again, I know that our colleagues from the Government
23 are relying on agents to get them this information; so I
24 don't in any way think this is a fault, deliberate, but
25 you'll see that this was -- the ultimate destination was

1 actually the UAE. So there was a flight from Florida to
2 Newark, Newark to Paris -- to Zurich -- excuse me -- and then
3 the third part of the ticket is Zurich to Dubai. For some
4 reason, whoever researched this case for the Government, took
5 the position that it ended at Zurich. Had that person or
6 persons done that additional research and just flipped over
7 to the next page when they did their investigation, they
8 would have seen that this was ultimately going to go to the
9 UAE.

10 Now, here's what happens is that Mr. Banks has
11 gotten to the point of his life -- maybe he grew up under the
12 most dire of socioeconomic circumstances, but you'll see he
13 was only able to get a reservation for this 24-hour trek on
14 economy, and he made a decision to ultimately book a private
15 plane, and that's, as the Government said, when he was taken
16 into custody. Unequivocally, he was taking that private
17 plane, which was going to change in Europe -- I believe in
18 Italy -- but ultimately that was going to go to the UAE as
19 well. But there was no flight to Switzerland --

20 THE COURT: So just so I'm clear, the e-ticket
21 itinerary and receipt that you just provided me for this
22 flight -- Mr. Banks did not take this flight on
23 United Airlines.

24 MR. FINDLING: That's correct.

25 THE COURT: He was prepared to board a private

1 plane in Miami; correct?

2 MR. FINDLING: That is correct, Your Honor.

3 THE COURT: All right.

4 MR. FINDLING: And we have talked with everybody
5 involved in his world. It is not unusual -- as it's not
6 unusual for business folks, to make reservations and then
7 pick the flight that works best for them, he opted to --
8 although he never got on it -- to not sit in -- wherever it
9 was -- in economy for the 24-hour trek but to fly private.
10 We've done our due diligence and been able to determine,
11 again, in about a 12- or 13-month period as many as
12 24 private flights. So this is not something inconsistent
13 with his lifestyle.

14 THE COURT: Let me just ask you, then. This
15 United Airlines ticket was booked at the last minute?
16 Because it's a -- as you said, it's an economy ticket.

17 MR. FINDLING: Yes.

18 THE COURT: Part of it is economy because it was
19 booked at the last minute?

20 MR. FINDLING: That's correct, Your Honor.

21 THE COURT: Okay.

22 MR. FINDLING: Yes. Yes. This was not done -- and
23 from our understanding, this is the way he's always booking
24 things, and I could just tell you from our representation of
25 folks in this industry, they're not doing like my wife and I

1 do, which is books things a month in advance because we're
2 anxiety ridden about not getting a flight. Everything is
3 last minute. This is apparently not inconsistent with how he
4 -- with how he travels. But we were able to determine these
5 flights to UAE are not unusual for him and in fact something
6 that is more usual than not.

7 Your Honor, when --

8 THE COURT: All right. Let me just ask you, if you
9 know, does the United States have an extradition treaty with
10 the United Arab Emirates?

11 MR. FINDLING: So we -- we've looked into it. We
12 do not see that there's an extradition treaty between the
13 countries. And of course he's been going back and forth
14 there. So this would have to have been, you know -- I would
15 say that this would be a concern if this were his first time
16 going there, but he has deep roots there. And in fact, I
17 know there's another witness in this case that has received a
18 subject letter that went there and then came back to meet
19 with the Government -- was my understanding from one of the
20 attorneys in the case. So it is just not an unusual place to
21 go. Again, this would be an issue if he had never gone.

22 (Counsel confer.)

23 MR. FINDLING: So my counsel is telling me there's
24 a MLAT since 2022 with the UAE.

25 (Pause.)

1 MR. FINDLING: Your Honor, on the -- so on the
2 issue of flight, I'm glad Pretrial Services took the position
3 that under certain circumstances -- particularly, I think,
4 mirroring what we're suggesting for Mr. Banks -- flight is
5 not an issue. I'm kind of at the point where I can't believe
6 I've been doing this career so long, but I actually find in
7 cases like this flight is really not an issue, and here's why
8 in this particularly, subjectively, flight is not an issue:

9 The Government's position is that Mr. Banks, who's
10 internationally known -- internationally known,
11 internationally recognized, with his presence on everything
12 on the internet, hard copy, in magazines, TV -- is going to
13 somehow go on the run, go on the lam, and when he does that
14 -- when he does that, not only give up this career that he's
15 built to escape poverty so that he can provide for his family
16 -- you can see that in the bail package he's bought his mom a
17 beautiful home that he's willing to put as part of the
18 package to secure his appearance.

19 But he's going to leave his wife. He's going to
20 leave the two children he has with her and his six other
21 children -- he's going to leave eight children that -- I know
22 Pretrial Services dotted their I's and crosses their t's to
23 know that he has always financially stepped up and assumed
24 the responsibility of taking care of his children. He's
25 going to leave his mom, who he gave this life to. He's going

1 to leave his dad, who he waited 26 years so he can have this
2 relationship, a relationship that was interrupted because in
3 2019 his dad gets out and then we all get slowed down for two
4 years from COVID. So he's finally first embracing this
5 loving relationship with his dad, enjoying being part of the
6 same faith together.

7 But he's going to leave his dad, he's going to
8 leave his wife, he's going to leave his kids, he's going to
9 leave his career, and -- we're going to get to in a second --
10 leave the amazing community work that he's done, respectfully
11 to Mr. Brayman, not just locally, throughout the
12 United States. I mean, this is -- as we've found out, this
13 isn't a hip hop performer that gives away backpacks on
14 Labor Day Weekend and a few turkeys. This is an incredible
15 amount of community service that he does on a regular basis.
16 He's going to give all that up. And I just think that
17 there's nothing to indicate that, particularly with this new
18 theory that he's going to Mexico because I -- I can't respond
19 to that because I don't know anything about that.

20 The other issue that we have to address,
21 Your Honor, is whether or not he is a threat to the safety of
22 any other person and the community. Now, this is an
23 important issue that -- and when we deal with him -- let me
24 just say this, Your Honor, based on what the Government said.
25 The Government conflates him individually and him with OTF,

1 "Only the Family," which Mr. Brayman went into a little bit.
2 I'm going to distinguish the two of those for you for a
3 second, and first I want to talk about him individually.

4 So -- one second.

5 (Pause.)

6 MR. FINDLING: The -- one second.

7 (Counsel confer.)

8 MR. FINDLING: So, Your Honor, if you look at the

9 --

10 (Counsel confer.)

11 MR. FINDLING: If you look at the indictment, and I
12 will tell you in the indictment the -- you know, every time
13 we read one of these we kind of look for that proverbial
14 "smoking gun." And if you look at page 2 of the indictment
15 -- excuse me -- page 3 of the indictment, paragraph 6, it
16 says (reading): Following the attempted murder of T.B. and
17 the murder of S.R., Defendant Banks sought to commercialize
18 S.R.'s death by rapping about his revenge on T.B. with music
19 that explicitly references audio from a news clip taken
20 shortly after S.R. --

21 THE COURT: You're quoting from the indictment?
22 Page 3 of the indictment?

23 MR. FINDLING: Yes, Your Honor. Page 3 of the
24 First Superseding Indictment, paragraph 6.

25 THE COURT: Okay.

1 MR. FINDLING: Yes.

2 THE COURT: Got it.

3 MR. FINDLING: (Reading) Following the attempted
4 murder of T.B. and the murder of S.R., Defendant Banks sought
5 to commercialize S.R.'s death by rapping about his revenge on
6 T.B. with music that explicitly references audio from a news
7 clip taken shortly after S.R.'s murder when T.B. screamed,
8 "No. No," after saying S.R.'s dead body.

9 And then it has the lyrics. I don't -- Your Honor,
10 can look at the lyrics. I don't want to embarrass myself and
11 try to do that.

12 And so the big thing there is -- the proverbial
13 "smoking gun" is that this incident takes place and months
14 later Mr. Banks puts out a song to celebrate it and
15 commercialize it. Immediately, when we got in the case, we
16 heard from people in the music industry that read about this
17 because it became a big news story. The press loved this,
18 him celebrating and doing that, and everybody said, "Hold on
19 a second. When you do music, you don't just record a song.
20 It is a long process." Not unlike movies; right? We're here
21 in L.A. Sometimes they'll make a movie in 2022, and it
22 doesn't come out until 2024. It's the same exact thing in
23 music.

24 Your Honor, we -- that song was recorded
25 approximately eight months before that incident took place.

1 We have a declaration by the music producer, Justin Gibson,
2 we have all the timestamps from the producer, and you could
3 see that this takes place -- instead of August '22, when the
4 incident takes place, this music was produced, these lyrics
5 performed by our client approximately seven months before, in
6 January of 2022.

7 I'm going to show this to the Government, then
8 tender it to the Court.

9 MR. YANNIELLO: Your Honor, we actually object to
10 this proffer, this line of argument. The bottom line is
11 there was a video that was filmed showing defendant's rival
12 screaming, "No. No," that was placed over these lyrics. So
13 independent of when the lyrics were actually written and
14 whether this was about Mr. Banks sanctioning some other
15 murder -- which the Government submitted evidence showing
16 that there were other monetary bounties placed on rivals and
17 to solicit murder. So independent of who this was ultimately
18 about, the commercialization and this allegation is
19 nonetheless valid.

20 And I also would object to counsel's point the
21 "proverbial smoking gun." The indictment lists significant
22 evidence related to Mr. Banks's involvement in the criminal
23 activity.

24 MR. FINDLING: Look. Your Honor, I -- let me say
25 this about this issue because we really discussed the ethics

1 of this situation. And I want counsel to know I'm not saying
2 counsel tried to slip one, you know, by anybody, but I know
3 that counsel relies on agents to make their case. They're
4 not out there doing -- they're relying on agents to make this
5 case.

6 This was presented to a grand jury, and
7 respectfully, somebody testified in front of the grand jury
8 about paragraph 6, and paragraph 6 does not echo the
9 sentiment of what you just heard from the Government.
10 Paragraph 6, as presented to a grand jury, specifically said
11 that these lyrics were composed and produced to celebrate
12 this shooting incident that is the heart of this case, and
13 that is provably false, and had anybody -- had any of our
14 clients who had been subpoenaed to a grand jury done
15 something like that, they would be in big, big trouble.

16 So this is an important issue when the Court is
17 determining, particularly, the second part of this analysis
18 because we know the Pretrial Service Report says, "Hey, we
19 think under the right conditions, we can ensure that he will
20 show up for court as required by Your Honor, but we're
21 concerned about dangerousness." And this is as big a fact as
22 any when you read the indictment. I could tell you, for what
23 it's worth, it's the one the press wants to write about the
24 most, and it's just provably false.

25 So if I could present it to the Court?

1 THE COURT: You can present it but I -- it would be
2 helpful if you focused on your argument on the allegations
3 that suggest that the defendant presents a danger to the
4 community, and the consistency and timing of the lyrics has
5 some relevance --

6 MR. FINDLING: Okay. Understood.

7 THE COURT: -- but marginal to the dangerousness
8 issue, which is the issue before me today.

9 MR. FINDLING: Understood. Understood.

10 MR. YANNIELLO: And, Your Honor, if I may just to
11 clarify the record. Mr. Findling was arguing, I understand,
12 very passionately about it. There's nothing in paragraph 6
13 that talks about when it was produced or written. So the
14 Government, again, objects with that -- or objects to that
15 characterization and disagrees with it.

16 (Pause.)

17 THE COURT: All right. You can provide the
18 information to my courtroom deputy.

19 MR. FINDLING: Okay. Thanks.

20 (Pause.)

21 MR. FINDLING: So, Your Honor, regarding these
22 relevant time periods that we are -- that we are talking
23 about, there is -- all we know is we got hit with something
24 last night about some confidential informant -- of what a
25 confidential information says, but we have nothing presented

1 by the Government as part of this hearing that is showing any
2 violent activity during this relevant time period by our
3 client. I mean, I do these hearings relentlessly, and
4 they're involving a shooting incident and a stabbing incident
5 and a fighting incident, and other than some unknown incident
6 that he's not charged for out of Chicago -- there's no
7 charges out of Chicago. Mr. Brayman has done a yeoman's job
8 at trying to keep up with that. There's no apparent case in
9 Chicago -- we have nothing.

10 The only thing that we are given is a dismissed
11 case in Fulton County and some unknown person that's a
12 cooperator that's casting allegations at our client. Other
13 than that, there's nothing of substance to indicate that he
14 is the perpetrator of violent activity, and particularly
15 because this incident resulting in this case takes place in
16 2022. I mean, it -- we're now in -- well excess of two years
17 goes by, and there's nothing to indicate that there's
18 anything hands-on that he's been involved in.

19 The only thing he's been involved in is what I'm
20 about to now turn to, and that is -- and you'll note that in
21 one of the footnotes an agent says something to the effect
22 that he tries to distance himself by involving himself in
23 community service, and that can't be anything further from
24 the truth. From 2020 through this period of time, while
25 there's nothing provable, substantive that the Government

1 could tender you to show that he's a threat to people, that
2 he's violent, okay -- we can do that, and we can show you
3 exactly what Mr. Brayman was referencing, and that is the
4 robust community service that he's been -- that he's been
5 involved in.

6 (Pause.)

7 UNIDENTIFIED SPEAKER: Judge, may I approach?

8 THE COURT: Yes.

9 (Pause.)

10 MR. FINDLING: So here's what our client has done
11 in the relevant periods that we're actually talking about,
12 right, from 2020 to 2024. He's established the
13 Neighborhood Heroes Foundation. During COVID -- you can see
14 from this he's actively involved in giving support to the
15 folks that were helping all of us survive during that period:
16 medical workers, first responders. And this wasn't some --
17 as I said, some kind of, you know, give away a few turkeys
18 and give away a few backpacks. We're talking about the
19 employment of an executive director, Mr. Freeman, who's here
20 with us today, a professional at working with nonprofits;
21 having a chairman of the board; having a board of directors,
22 and his outreach is not only in Chicago but was in Atlanta
23 and even Houston and elsewhere.

24 So during this period of time, he's literally
25 physically involved in extensive work with the community.

1 That's provable. That's not hearsay. That's not coming from
2 somebody that's trying to cut a deal and help themselves in
3 whatever case that they have. That's provable work by
4 business executives that have joined with him through this
5 tremendous effort. So that's, Your Honor, what we do know.

6 The Government referenced -- and I said that there
7 was kind of this conflating of him and Only the Family.
8 Only the Family, Your Honor -- and I'll be happy to share
9 with the Court, Only the Family was duly incorporated in
10 2012. We've interviewed extensively the transactional lawyer
11 from Chicago that did that. It is a -- it is a corporation.
12 And at the same as -- you can see that Mr. Banks -- he signs,
13 again, with -- he eventually signs with Alamo, which is a
14 division of Sony. The COO of Sony -- of Alamo division of
15 Sony is here supporting him.

16 If you'd be kind enough to stand up.

17 So this division of Sony stands by his side. You
18 can actually see that they have pledged that, if he's able to
19 put together his bail package, they will put up \$1 million in
20 cash to support him. All right? But that's him
21 individually. But in the music world, as we have learned,
22 there's your individual success, but what everybody wants to
23 do is to also start your own label, and that's what he did
24 with OTF, Only the Family, because to sign other people and
25 to build your industry, you have a greater profit center, and

1 that's what he did in 2012, and so in 2012 he duly
2 incorporates and starts Only the Family.

3 And then that grows, and in 2020 and 2021, he
4 reaches a relationship for Only the Family with Epic Records,
5 a distributor out of San Francisco. And so he's not only
6 incorporated, but now he extends that and broadens it by
7 entering into a relationship with Epic Records out of
8 San Francisco, and the agreement there is that
9 Only the Family has to get other artists, and they actually
10 commit to getting another artist, each artist, I think, has
11 to put out 17 songs each, and they recommit from 2020 to
12 2021.

13 And then last year he reaches yet another agreement
14 with a -- another division of Sony, AWAL, where
15 Astronaut Sounds, which is his LLC that does its transactions
16 as Only the Family through yet another transactional lawyer
17 -- very, very well-known -- Hector Baldonado, one of the
18 biggest entertainment lawyers in the country -- reaches this
19 deal with AWAL, which is now sold for, like, a billion or
20 \$2 billion to Sony so that OTF can have a relationship with
21 that division. Mr. Norva Denton from AWAL division of Sony
22 is here.

23 (Counsel confer.)

24 MR. FINDLING: If you'd stand up. Thank you, sir.

25 MR. YANNIELLO: Drew, my apologies to interrupt.

1 But, Your Honor, we'll stipulate to the defendant
2 being a successful music artist. This case isn't about that.
3 It's about his control of the label that he referenced here,
4 OTF, but, more importantly, the violent crime that's at issue
5 here. So Your Honor asked counsel to address the specific
6 issue of danger, and, again, we don't see any of this as
7 being relevant to that.

8 MR. FINDLING: Well, it is, Your Honor, because the
9 indictment specifically says that OTF is a violent gang.
10 OTF is a duly incorporated organization that has reached a
11 relationship through transactional lawyers with two major
12 corporations, corporations that vet the people that they do
13 business with. I don't think a division of Sony is going to
14 sit down and create a deal for hundreds of thousands of
15 dollars with Only the Family, and specifically Durk Banks, if
16 through their vetting process they think that they are
17 getting in bed with a criminal organization led by a criminal
18 gang leader. I don't think that Alamo Records, another
19 division of Sony, is going to do that either. I don't think
20 Empire Records out of San Francisco -- extremely well-known
21 in corporate circles -- is going to get in that relationship.

22 So the Government's picture that they've presented
23 to Your Honor and that is in those documents that are part of
24 the record is that all he is, is a gang leader, and that's
25 just not true. And so we don't know about the actions of

1 others, we don't know what other people are responsible for,
2 but we know this: that there is nothing that shows during
3 this relevant time period, other than complete conjecture,
4 that Durk Banks has himself done anything, and the reason
5 these are relevant facts is because you have to balance,
6 respectfully, that conjecture from provable facts because
7 those are not provable facts. These are provable facts. So
8 I appreciate the stipulation because the stipulation is that
9 he's a law-abiding citizen. The stipulation is that he's no
10 different than any other person trying to establish a
11 corporate entity so that he can succeed individually and
12 collectively for his organization and for his family.

13 And so I think that it's the Government that has
14 not been able to, in a very brief recitation, show that
15 somehow he is a threat to everybody in the community.
16 Because other than this isolated incident that other people
17 are directly involved in, not him, they have not been able to
18 put their finger on anything other than an email at
19 10:00 o'clock last night about a case that he truly has
20 nothing to do with, that prosecutors not pursued him in
21 another jurisdiction.

22 And so we understand that bail is not guaranteed,
23 but there has to be from the Government's perspective -- from
24 their perspective, not ours, a certain balance that they have
25 to exceed, and that just hasn't happened here. So, yes,

1 we're loading down with things because -- we're doing that
2 because we'd be doing it if he were in the insurance
3 business, we'd be doing that if he were a lawyer or a CPA,
4 and I think it's important for the Court to balance these
5 personal and professional successes.

6 And more importantly, if the documents that you
7 indicated -- and I appreciate that you reviewed -- at the
8 beginning say, "OTF," "OTF," "OTF" -- for this Court to
9 understand that he has taken every step that you would expect
10 somebody that's really -- I mean, look at his education;
11 right? It's in the report. He doesn't even have his GED,
12 but he knows enough to go from one transactional lawyer,
13 local in Chicago, to then getting to the point just in the
14 last two years where he hired one of the most well-known
15 transactional lawyers in America to take Only the Family and
16 himself to yet another level. All those are things to be
17 taken into consideration.

18 And so I think if we couple that, Your Honor, with
19 the package -- and I appreciate you looking at -- we think
20 that, as the Court knows, under the Bail Reform Act, we need
21 to -- the Court needs to, respectfully, look at the least-
22 restrictive condition or combination of conditions that will
23 assure that Mr. Banks will appear and also for the safety of
24 the community.

25 And so I don't think -- you know, the Government's

1 response in their filing is that he's trying to use his
2 money, and honestly, I don't even understand how I'm supposed
3 to respond to that. If you don't have money, then you have a
4 problem. If you have some money, you're trying to use it to
5 create conditions that will work, and that's what we're
6 trying to do for Your Honor.

7 We've been in contact through his management.
8 We're ready to put him in a property. I'm not going to say
9 it out loud. The Court has the location. We have really
10 taken the issue of security seriously. I want the Court to
11 know that in good faith we have perused cases that we've
12 worked on and our colleagues around the country. We tried to
13 put conditions that are similar with some other very similar
14 cases with very similar charges around the United States, and
15 so we're trying to create a 24/7 security.

16 And I want the Court to know that, if the Court
17 thinks that this is a threshold and you want us to take it up
18 a notch or 12 notches and it takes us a month to satisfy what
19 the Court wants us to do, we'll do that. We just thought we
20 would go for what we thought was as strict as possible.

21 And so we like the security company that we
22 interviewed. We've studied the qualifications of literally
23 -- we literally studied the qualifications of each and every
24 person. So you could see in our package that we've offered
25 with the security company -- we didn't want people that have,

1 you know, played college football and stopped playing college
2 football and were bouncers at a bar and now they'd be
3 security. You'll note that we provided you with the
4 background of every single person that will be there 24/7 --
5 each one of them. We vetted each of them when we selected
6 this company.

7 You -- we've provided the information regarding his
8 employment, because that's an issue, and that's where you see
9 from the COO of Alamo he can continue in a way that would be
10 agreeable to be employed if he could do it while he's in
11 detention -- home detention. We can work that out. That's
12 happened with others. There are ways that I know through
13 other similar cases, if the person is permitted to be
14 employed, they can do that work at home. They can literally
15 -- we picked a home that we -- if it was possible, he can
16 record music. If the Court wanted a system where we had to
17 review lyrics, we've done that as well. Our -- Marissa and
18 my associates say they're the only lawyers in America that
19 went to law school and have to read lyrics. But if we need
20 to do that -- whatever we need to do, as restrictive as the
21 Court says, we will do.

22 We've listed, as required, his finances. Regarding
23 the properties, we furnished the information. You could see
24 we gave you unencumbered property, both in Braselton,
25 Georgia, and Northern Gwinnett County, a very popular

1 suburban county in Georgia. I think we have one property at
2 1.6-, one at 7-. That combines for \$2.3 million of
3 unencumbered property that we'll pledge.

4 We've -- Your Honor knows that we already have a
5 million-dollar cash commitment. I could tell you, if the
6 Court says to us, "I think that it needs to be financially
7 this number," we have offers coming in by people in the
8 business world, literally people in the business world that
9 so stand behind Mr. Banks. These offers are coming in. We
10 literally put the pause button because we want to see if the
11 Court says, "You know what? This is really good enough."
12 Not many people can do something like this, but if the Court
13 says given the facts and circumstances of this case it needs
14 to be X dollars, then we'll take the time to reach that, but
15 we have no doubt that with the business community that's
16 reached out to us -- and I don't mean the music community. I
17 mean the business community that's reached out -- we can
18 achieve additional equity or third-party guarantors.

19 We think that this combination constitutes a
20 sufficient bail package under this set of circumstances, and
21 we're willing to entertain any suggestions or questions that
22 the Court may have.

23 If I could just ask my cocounsel anything else they
24 want me to add?

25 THE COURT: Certainly.

1 (Counsel confer.)

2 MR. FINDLING: That's all, Your Honor.

3 THE COURT: All right. Thank you, Counsel.

4 I note that Pretrial Services is here. Does
5 Pretrial Services have anything that you would like to add
6 with regard to the -- your report and recommendation?

7 FATIMA VAZQUEZ: Good afternoon, Your Honor.
8 Fatima Vazquez with Probation and Pretrial Services.

9 Nothing further, Your Honor, from us. Thank you.

10 THE COURT: All right. Thank you.

11 All right. Does the Government have a response?

12 MR. YANNIELLO: Briefly, Your Honor.

13 THE COURT: And if you could please go to the
14 lectern.

15 MR. YANNIELLO: Sure.

16 So, Your Honor, most of what counsel just
17 articulated, again -- I objected twice -- I don't see it as
18 responsive or relevant to the narrow issue before Your Honor,
19 whether or not conditions or combination of conditions can
20 reasonably assure the defendant's appearance or mitigate
21 danger to the community.

22 So what essentially has been offered is Mr. Banks
23 has offered a small portion of his net worth and then
24 sureties by others, including a corporate surety, and then a
25 security company that's offering physical security. As the

1 allegations in this case make abundantly clear, Mr. Banks
2 wasn't on the street pulling the trigger. He was the one who
3 allegedly orchestrated it. He was giving the greenlight to
4 book the flights. In fact, as one of -- as an OTF associate,
5 somebody working for the label, was booking the flights for
6 five coconspirators to fly to L.A. to commit this murder,
7 Mr. Banks, as alleged in the indictment, sends a text
8 message, "Don't put my name on those flights." So Mr. Banks
9 knew exactly what was going on, and he helped facilitate this
10 murder as the leader of the organization.

11 Counsel didn't really address much of what the
12 indictment actually alleges and instead focused on the
13 portion that referenced rap lyrics, but we'd submit to
14 Your Honor the indictment is lengthy and includes allegations
15 that show Mr. Banks's significant involvement in the murder.

16 With that, again, the murder was committed through
17 intermediaries, and the physical surveillance company that
18 counsel is offering to mitigate flight and danger really
19 offers no mitigation to that, that he could still -- nothing
20 about that prevents him from intimidating witnesses,
21 instructing intermediaries, sending text messages. So the
22 Government stands by its briefing and requests that the Court
23 detain the defendant.

24 MR. FINDLING: Your Honor, if I can --

25 THE COURT: All right. Thank you, Counsel.

1 MR. FINDLING: If I can add: We'd be willing to
2 surrender telephonic communication devices. You know, we're
3 -- again, we're -- we've been -- Ms. Goldberg and I have been
4 through this before. If there's a rule regarding telephonic
5 communication devices, we would abide by that.

6 And we also have reached out to a third party --
7 which is unusual in federal cases, but if the Court wanted a
8 bonding company to be a third party involved, we've already
9 made contact and have one that's willing to get involved, if
10 necessary.

11 THE COURT: All right. Is there anything further
12 from the defense?

13 MR. FINDLING: No, Your Honor.

14 THE COURT: From the Government?

15 MR. YANNIELLO: No, Your Honor.

16 THE COURT: All right. I have reviewed the
17 materials that were -- I indicated at the beginning of the
18 hearing -- that I identified at the beginning of the hearing,
19 and I have also reviewed the materials that were submitted by
20 the defense at the hearing, the e-ticket itinerary and
21 receipt and the Neighborhood Heroes Foundation -- it's, like,
22 a printout from a slide deck that looks to be about 30 pages,
23 which counsel referenced during the argument.

24 All right. Based on the violations that are
25 charged -- with which the defendant is charged in the

1 First Superseding Indictment, there is a presumption in this
2 case that the defendant is both a danger to the community and
3 a risk of flight. The defense has the burden of producing or
4 proffering evidence to rebut the presumption, and the defense
5 has proffered a considerable amount of evidence, which the
6 Court has taken into account. The presumption does
7 nonetheless remain in the case, although I will note that the
8 -- particularly with regard to the risk of flight, the
9 defense has proffered considerable information.

10 And I recognize the community service that is
11 reflected in the documents that have been provided by the
12 defense. The issue before this Court is very narrow, which
13 is whether there are condition or combination of conditions
14 that can reasonably assure the safety of the community, as
15 well as the appearance of the defendant as required. It's
16 not an issue before this Court whether the defendant is or is
17 not a member of a gang or how his family organization is
18 characterized.

19 With regard to both flight risk and danger, based
20 on all of the evidence, I do find that there is no condition
21 or combination of conditions that will reasonably assure,
22 first of all and most significantly, the safety of the
23 community and any other person, and this is of course based
24 primarily on the allegations in the First Superseding
25 Indictment, and although the allegations are not that the

1 defendant personally pulled the trigger, the allegations are
2 that the defendant exercises a significant amount of control
3 over other individuals and that those individuals were acting
4 at his direction.

5 And I agree with the Government that the presence
6 of a security company providing security for the defendant is
7 not going to address the significant concerns with regard to
8 safety of the community here. The security company would be
9 acting at the direction and under the guidance of the
10 defendant, and so I do not find that that addresses issues
11 regarding dangerousness.

12 With regard to a serious risk of flight, that is a
13 closer call. I recognize that Pretrial Services concludes
14 that there are conditions that can be set that would address
15 the significant risk of flight. However, I disagree and find
16 that there is no condition or combination of conditions that
17 will reasonably assure the defendant's appearance as required
18 given the fact that the record is replete with evidence that
19 he has significant resources and ability to leave the
20 jurisdiction. Whether it is for an entity that the U.S.
21 Government can engage in extradition proceedings with or not,
22 he has the ability to, clearly, and resources to leave the
23 jurisdiction.

24 The bond package, although significant, would leave
25 the defendant with considerable resources, and his own

1 actions in this case, which suggest that upon learning that
2 the -- these charges were imminent -- charges, which I might
3 add, carry a maximum sentence of life imprisonment -- induced
4 him to make preparation -- apparently, hasty preparation to
5 leave the country.

6 So for all of those reasons, the Government's
7 request for detention on both of those bases is granted, and
8 I will issue a written order.

9 All right. Then is there anything further in this
10 matter from the Government?

11 MR. YANNIELLO: No, Your Honor.

12 THE COURT: All right.

13 From the defense?

14 MR. FINDLING: No, Your Honor.

15 THE COURT: All right.

16 THE CLERK: Court is adjourned.

17 (Proceedings adjourned at 3:29 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct
transcript from the electronic sound recording of the
proceedings in the above-entitled matter.

/s/ Julie Messa
Julie Messa, CET**D-403
Transcriber

January 25, 2024
Date